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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term 1957

No. 521

In the Matter of the Application

of

WILFRED DANIEL MURTHA,

Petitioner-Appellant.

—against—

GEORGE P. MONAGHAN, Commissioner of the Harness Racing Commission of the State of New York,

Respondent-Respondent,

for an order annulling a determination of said respondent denying petitioner's application for a license as a mutuel clerk and for a further order directing said Commission to forthwith issue such license, pursuant to Article 78, C.P.A.

PETITIONER'S REPLY BRIEF

DAVID M. MARKOWITZ
Attorney for Petitioner
261 Broadway
New York City

MICHAEL J. GAYNOR
Westbury, L.I. N.Y.
18 Carle Road
of Counsel

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PETITIONER'S REPLY BRIEF

It scarcely seems necessary to point out that respondent's brief in opposition to the petition herein wholly overlooks the real question presented. This Court is not

asked to pass upon the "wisdom" of a "very limited experiment in 'home rule'" as stated on page 8 of the respondent's brief, but upon the constitutionality of a statute which prohibits some public employees from engaging in an entirely proper and legal outside activity, duly licensed by the State, which involves no conflict of interest and in no way interferes with the proper performance of his public duties. It is the power of the State Legislature that is challenged; the question presented is the reasonableness of the statute (in the light of the Fourteenth Amendment), not its wisdom (which of course this Court would not be expected to pass upon). Petitioner contends that the enactment unreasonably discriminates against a class within a class.

The personal, individual rights of petitioner and many others are vitally affected. This Court has very recently consented to review on the merits a decision of the New York Court of Appeals upholding the validity of a statute pursuant to which a public employee (a subway conductor) was discharged for invoking the Fifth Amendment (*Matter of Lerner* v. *Casey*, 2 N. Y. 2d 355, cert. granted Oct. 14, 1957, (No. 165).

At no point during this litigation has there been any dispute as to the facts. A pure question of law is presented.

All the issues are before this Court on this application. Summary reversal to the end of a final determination is respectfully urged inasmuch as the decision below, based on undisputed facts and predicated on unsound principles of law, is so clearly erroneous as to make argument before the court a waste of time. See: *Palermo* v. *Luckenbach*

Steamship Company, Inc. (No. 350) Decided October 21, 1957; *Securities & Exchange Commission* v. *Otis & Co.*, 338 U. S. 843.

Respectfully submitted

DAVID M. MARKOWITZ
Attorney for Petitioner
261 Broadway
New York City

MICHAEL J. GAYNOR
18 Carle Road
Westbury, Long Island,
New York
of Counsel